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BY ECF and First Class Mail

The Honorable James C. Francis IV
United States Magistrate Judge
United States District Court
500 Pearl Street
New York, New York 10007

Re: *Nunez, et al., v. City of New York, et al.*, 11-CV-5845 (LTS) (JCF)

Dear Judge Francis:

This office, together with The Legal Aid Society Prisoners' Rights Project and Emery Celli Brinckerhoff & Abady, is counsel for the Plaintiff Class in this matter. Emery Celli Brinckerhoff & Abady, together with The Legal Aid Society Prisoners' Rights Project, also are counsel for the Plaintiffs in their individual damages claims. Plaintiffs write to respectfully request a modification of the Discovery Plan ordered by the Court (Dkt. # 118).

The City asked, and the Plaintiffs agreed, to move the settlement week break, currently scheduled for the week of April 7, to the week of May 12, subject to leave of the Court. The new DOC Commissioner, Joseph Ponte, took office on April 7, 2014. Moving the settlement week break will allow the incoming leadership of the Department of Correction an opportunity to review and consider Plaintiffs' settlement proposal with respect to the claims of the Plaintiff Class¹. The Parties have agreed to begin some Phase II depositions prior to the new proposed settlement week break.

Plaintiffs had planned to conduct all still-outstanding Phase I depositions called for by the Discovery Plan (four supervising DOC wardens, Deputy Executive Director of the Board of Correction, Amanda Masters, and Medical Director of the NYC Department of Health and Mental Hygiene, Dr. Homer Venters) before the new proposed settlement week break. However, the continued slow pace of the City's ESI production (a problem identified in Plaintiffs' February 5, 2014 letter to the Court, Dkt. # 113, at 2-3, & n.3), combined with the City's recent refusal to produce Dr. Venters for deposition (his planned deposition also was discussed in Plaintiffs' February 5, 2014 letter, at 4) before the new proposed settlement week break,

¹ Plaintiffs sent that settlement proposal to the City on March 24, 2014. It included a detailed, 25 page set of proposed terms, and a substantive 13 page cover letter.

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threatens Plaintiffs' ability to stay on that planned schedule. Plaintiffs plan to submit, by April 14, 2014, a letter addressing those two issues and requesting appropriate relief from the Court, including, given the exigencies of time before the new proposed settlement week break, a conference with the Court to promptly resolve those issues.

Plaintiffs appreciate the Court's consideration of this request. We are available if the Court has any questions.

Respectfully yours,

William I. Sussman
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/SB

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cc: All counsel (by ECF and First-Class Mail)